

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CRIMINAL JUSTICE ACT PLAN

FILED
KENNETH J. MURPHY
CLERK

DEC 14 PM 3:54

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

I. AUTHORITY.

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), section 3006A of Title 18, United States Code, and the *Guidelines for the Administration of the Criminal Justice Act*, Volume VII, *Guide to Judiciary Policies and Procedures* (CJA Guidelines), the judges of the United States District Court for the Southern District of Ohio adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY.

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in part at 21 U.S.C. §848(q)) and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance.

1. The Court, its Clerk, the Federal Public Defender, the Ohio Public Defender, and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. Each private attorney shall be provided by the Clerk of Court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make known its availability to such attorneys.

III. DEFINITIONS.

- A. "Representation" includes counsel and investigative, expert and other services.
- B. "Appointed attorney" includes private attorneys, the Federal Public Defender and staff attorneys for the Federal Public Defender Organization, and the Ohio Public Defender and staff attorneys of that organization.

IV. PROVISION OF REPRESENTATION.

A. Circumstance.

- 1. Mandatory. Representation *shall* be provided for any financially eligible person who:
 - a. Is charged with a felony or with a Class A misdemeanor;
 - b. Is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. §5031;
 - c. Is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - d. Is under arrest, when such representation is required by law;
 - e. Is entitled to appointment of counsel in parole proceedings;
 - f. Is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. Is subject to a mental condition hearing under chapter 313 of Title 18, United States Code;
 - h. Is in custody as a material witness;
 - i. Is seeking to set aside or vacate a death sentence under 28 U.S.C. §§2254 or 2255;
 - j. Is entitled to appointment of counsel in verification of consent proceedings, pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
 - k. Is entitled to appointment of counsel under the Sixth Amendment to the Constitution;

- l. Faces loss of liberty in a case and federal law requires the appointment of counsel;
 - m. Is entitled to appointment of counsel for an evidentiary hearing in actions under 28 U.S.C. §§ 2254 or 2255;
 - n. Is charged with civil or criminal contempt and who faces loss of liberty; or
 - o. Is charged with a petty offense (Class B or C misdemeanor or an infraction) for which a sentence of confinement is authorized, unless the presiding judicial officer agrees at initial appearance that no confinement will be imposed.
2. Discretionary. Whenever a District Judge or Magistrate Judge determines that the interests of justice so require, representation *may* be provided for any financially eligible person who:
- a. Is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized, even if the presiding judicial officer agrees at initial appearance that no confinement will be imposed;
 - b. Is seeking relief under 28 U.S.C. §§2241, 2254, or 2255, other than to set aside or vacate a sentence of death;
 - c. Has been called as a witness before a federal grand jury, a federal court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during the testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
 - d. Is proposed by the United States Attorney for processing under a pretrial diversion program;
 - e. Is held for international extradition under chapter 209 of Title 18, United States Code;
 - f. Representation may also be furnished for financially eligible persons in appropriate ancillary matters proceedings.

B. When Counsel Shall be Provided.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a Magistrate Judge or District Judge, when they are formally charged or notified of charges if formal charges are sealed, or when a Magistrate Judge or District Judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number And Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the Court to be extremely difficult. In a capital case, more than one attorney should be appointed.
2. Qualifications. Except as provided by 21 U.S.C. §848 (q)(7), at least one attorney appointed in a capital case shall meet the qualification requirements set forth in §§ 848 (q)(5) and (6). Pursuant to § 848 (q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under §§848(q)(5) and (6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

D. Eligibility for Representation.

1. Factfinding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a District Judge or Magistrate Judge after making appropriate inquiries concerning the person's financial condition.
2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

V. FEDERAL PUBLIC DEFENDER.

A. Recognition of Existing Organization.

1. The Federal Public Defender of the Southern District of Ohio, previously established in this District pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this district.
2. The Federal Public Defender is capable of providing legal services throughout the district, in the Eastern and Western Divisions of the district, and shall maintain offices at each Seat of Court.

- B. Supervision of Defender Organization. The Federal Public Defender shall be responsible for the supervision and management of the Federal Public Defender Organization. Accordingly, the Federal Public Defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.

VI. PRIVATE ATTORNEYS.

- A. CJA Panel. The existing, previously established panel of attorneys (CJA panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.

B. Formation of a Seat of Court Standing Committee to Oversee the Criminal Justice Act Panel in Each Seat of Court. ("Seat of Court CJA Panel Committee").

1. The Court hereby creates a standing committee in each Seat of Court (Cincinnati, Dayton, and Columbus), to be known as the "Seat of Court CJA Panel Committee." Each Seat of Court CJA Panel Committee shall consist of the following members:
 - a. The Federal Public Defender or his/her designee;
 - b. The Clerk of Court for the Southern District of Ohio or his/her designee, who shall provide administrative and clerical support to the committee;
 - c. A CJA Panel Attorney who regularly practices in the Seat of Court in which the committee is constituted and who possesses sufficient experience and interest in the federal criminal justice system to administer the CJA Panel for the Seat of Court in which the committee is constituted; and
 - d. A Magistrate Judge from the Seat of Court in which the committee is constituted, who shall serve as Chair.
2. The CJA Panel Attorney and Magistrate Judge committee members shall be appointed by the Chief Judge for the Southern District of Ohio for two year terms and may be reappointed for additional terms at the discretion of the Chief Judge for the Southern District of Ohio.
3. The responsibilities of the Seat of Court Committee include:
 - a. Reviewing and maintaining the CJA Panel Attorney List within the Seat of Court, to include designation by experience, if appropriate;
 - b. Determining if any attorney presently on the CJA Panel Attorney List should be stricken from the list or whether other attorneys presently not on the CJA Panel Attorney List should be added to the list;
 - c. Making recommendations or raising issues concerning the administration of the CJA Panel Attorney List or appointment of counsel to the Southern District of Ohio CJA Panel Standing Committee;
 - d. Updating the CJA Panel Attorney List and reporting its recommendations to the Southern District of Ohio CJA Panel Committee not later than June 30 of each year; and
 - e. Maintaining and updating a Death Penalty Habeas Corpus Panel List, consistent with the mandates of 21 U.S.C. § 848(q).

4. The Seat of Court Committee will be appointed and meet within 90 days of the adoption and final approval of this Criminal Justice Act Plan. Thereafter the Seat of Court Committee will meet from time to time as needed to complete its tasks, but no less often than annually.
- C. Formation of a Southern District of Ohio Standing Committee to Oversee the Criminal Justice Act Panel in the Southern District of Ohio ("Southern District of Ohio CJA Panel Committee")
1. The Court hereby creates a standing committee to be known as the "Southern District of Ohio CJA Panel Committee." The Southern District of Ohio CJA Panel Committee shall consist of the following members:
 - a. The Chief Judge for the Southern District of Ohio or his/her designee, who shall serve as Chair;
 - b. The Federal Public Defender or his/her designee;
 - c. The Clerk of Court for the Southern District of Ohio or his/her designee, who shall provide administrative and clerical support to the committee;
 - d. The CJA Panel Attorney member of each of the Seat of Court committees; and
 - e. The Magistrate Judge member of each of the Seat of Court committees.
 2. The responsibilities of the Southern District of Ohio CJA Panel Committee include:
 - a. Reviewing this Plan and any Appendices thereto;
 - b. Determining if any amendments to this Plan, and any Appendices thereto, are appropriate to ensure that the right to counsel is protected for all eligible persons within the Southern District of Ohio;
 - c. Making recommendations to the Court or raising issues concerning the administration of the CJA Panel Attorney List or appointment of counsel; and
 - d. Reporting its recommendations to the Court not later than December 31 of each year.
 3. The Southern District of Ohio CJA Panel Committee shall meet within 90 days of the receipt of the reports from the Seat of Court CJA Panel Committees. Thereafter the Southern District of Ohio CJA Panel Committee will meet from time to time as needed to complete its tasks, but no less often than annually.
- D. Organization. The Plan for the Composition, Administration and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix I of this CJA Plan.

- E. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" means approximately 25% of the appointments under the CJA annually throughout the district.

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. § 2254.

- A. Appointment of Counsel. The Court shall appoint, at its discretion, the Ohio Public Defender and/or a member or members of the Death Penalty Habeas Corpus Panel, under 21 U.S.C. §848 (q) to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under 28 U.S.C. §2254.
- B. Resource Center. The Ohio Public Defender located in Columbus, Ohio, previously designated as a community defender organization pursuant to the provisions of the CJA, is hereby recognized as a resource center for the district.
- C. Compensation. The Court hereby establishes the standard fee for appointed counsel at \$125.00 per hour. See 21 U.S.C. § 848(q). *Guidelines for the Administration of the Criminal Justice Act*, Chapter VI, § 6.02.

VIII. DUTIES OF APPOINTED COUNSEL.

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the *Code of Professional Responsibility*, and shall be subject to the *Model Federal Rules of Disciplinary Enforcement* as adopted by this Court (General Order 81-1).
- C. No Receipt of other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the Court.
- D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari, is closed, until substitute counsel is appointed, or until otherwise relieved of professional responsibility by order of the Court.
- E. Acceptance of Appointments. Attorneys on the CJA Panel List are expected to make themselves available to accept appointments when called upon to do so and to serve as a mentor for less experienced counsel.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES.

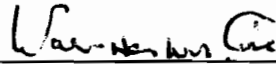
- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and shall, in such cases in which the person desires counsel and indicates that he or she is not financially able to secure representation, arrange to have the person promptly presented before a Magistrate Judge or District Judge of this Court for determination of financial eligibility and appointment of counsel.
- B. Pretrial Services Interview. In recognition of the importance of the advice of counsel for persons being interviewed by pretrial services officers, the pretrial services officers of this district, prior to conducting such interviews, shall notify the defendant of defendant's right to speak with an attorney before answering any questions and of defendant's right to have an attorney appointed to represent defendant during questioning if defendant cannot afford an attorney. Such notice shall be given in writing and in substantially the same format as provided in the document attached hereto at Appendix II.
- C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States Attorney or the probation officer, as appropriate, immediately shall mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he or she is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

X. MISCELLANEOUS.

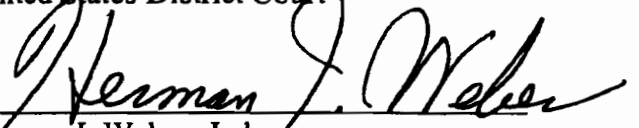
- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.
- B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the office of the Clerk of the Court. That office shall review the claim for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate District Judge or Magistrate Judge. The Court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.
- C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this Court.

XI. EFFECTIVE DATE.

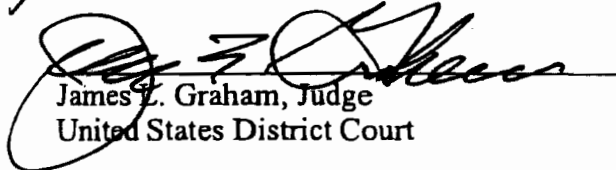
This Plan shall become effective when approved by the Judicial Council of the Sixth Circuit.



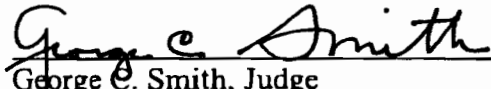
Walter Herbert Rice, Chief Judge
United States District Court



Herman J. Weber, Judge
United States District Court



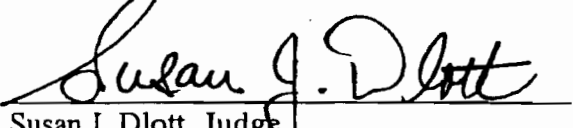
James L. Graham, Judge
United States District Court



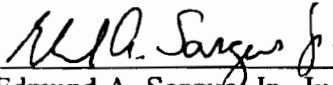
George C. Smith, Judge
United States District Court



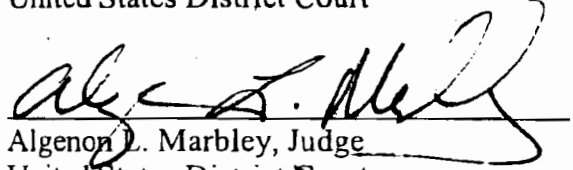
Sandra S. Beckwith, Judge
United States District Court



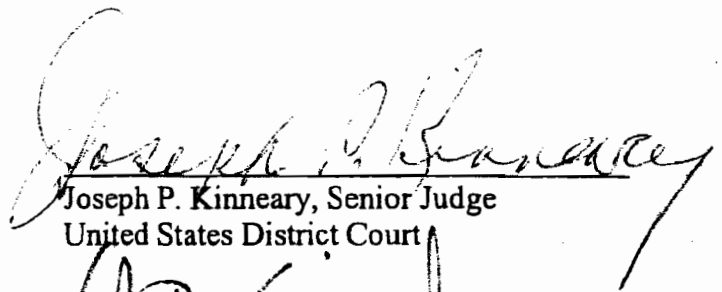
Susan J. Dlott, Judge
United States District Court




Edmund A. Sargus, Jr., Judge
United States District Court



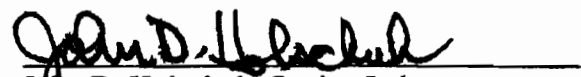
Algenon L. Marbley, Judge
United States District Court



Joseph P. Kinneary, Senior Judge
United States District Court



S. Arthur Spiegel, Senior Judge
United States District Court



John D. Holschuh, Senior Judge
United States District Court

APPENDICES:

- I. Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act.
- II. Notice to Defendants

CERTIFICATE OF APPROVAL

This is to certify that, in accordance with the Criminal Justice Act of 1964 as amended, 18 U.S.C. Section 3006A, *et. seq.*, the foregoing Amended Criminal Justice Act Plan for the United States District Court for the Southern District of Ohio has been duly received and approved as complying with the law by the Judicial Council of the Sixth Circuit of the United States. The said Amended Plan shall become effective upon the date of this approval.

This 5th day of December, 2000.

A handwritten signature in black ink, appearing to read "Boyce F. Martin, Jr.", is written over a horizontal line.

Boyce F. Martin, Jr.
Chief Judge, United States Court
Of Appeals for the Sixth Circuit

APPENDIX I

**PLAN FOR THE COMPOSITION, ADMINISTRATION
AND MANAGEMENT OF THE PANEL OF PRIVATE
ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT**

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS.

A. CJA PANEL

1. Approval. The Court has established a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The CJA Panel is divided into separate lists for each of the three seats of court. A Seat of Court CJA Panel Committee may approve additional members of the panel if satisfied that the attorney meets the eligibility requirements set forth in paragraph 3.
2. Size. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA case load, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.
3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district; possess prior federal and/or state criminal trial experience; and have demonstrated knowledge of the Sentencing Guidelines, the Bail Reform Act, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and/or sufficient clinical experience, participation in trial advocacy programs or other experience sufficient to demonstrate to the Seat of Court CJA Panel Committee that they will provide competent representation. To maintain eligibility, each Panel attorney shall complete biennially at least six hours of continuing legal education in federal criminal practice, including at least two hours on application of the Sentencing Guidelines. Compliance with this requirement will be monitored by the Magistrate Judge members of the Seat of Court Committees.
4. Term of Appointment. Members of the CJA Panel shall serve continuously until they resign or are removed. A Seat of Court Committee may remove a member from the panel if the attorney fails to meet his or her obligations under this Plan.

B. Creation of a Pending Applications List. (Mentor Program).

1. A "Pending Applications List" shall be established, consisting of lawyers who have applied for membership on the panel and who do not yet possess sufficient skill, knowledge, or experience to be eligible for the CJA panel. Pending final approval of their applications, such attorneys shall receive training which may include service, at no

expense to the government, in a second chair capacity to a panel attorney on a given case, or aspects of a given case, including detention hearings and sentencing proceedings.

2. The Seat of Court CJA Panel Committee shall maintain the pending applications list. Panel attorneys will be advised of the existence of such a list and will be expected to contact the Clerk's Office or a Seat of Court CJA Panel Committee member to obtain the names of attorneys seeking to serve in a second chair capacity. The Seat of Court CJA Panel Committee shall periodically review the pending applications list and determine which attorneys then meet the criteria for appointed counsel set forth in paragraph A.3 hereof and should be moved to the regular panel.

II. SELECTION FOR APPOINTMENT.

A. Maintenance of list and Distribution of Appointments.

The Clerk of the Court shall maintain a current list of all attorneys included on the CJA Panel for each Seat of Court and shall make that list available to all District Judges and Magistrate Judges. The Clerk, with the assistance of the Magistrate Judges and the Federal Public Defender, shall maintain statistical data reflecting the number of appointments of private attorneys and the number of appointments of the Federal Public Defender.

B. Method of Selection.

The Magistrate Judges shall make appointments from the CJA Panel based upon the nature and complexity of the case, an attorney's experience and other factors which will promote a fair distribution of the caseload among panel members.

III. COMPENSATION -- FILING OF VOUCHERS.

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk. The Clerk shall review the claim form for mathematical and technical accuracy, and for conformity with the *Guidelines for the Administration of the Criminal Justice Act* (Vol. III, *Guide to Judiciary Policies and Procedures*) and, if correct, shall forward the claim form for the consideration and action of the appropriate District Judge or Magistrate Judge.

APPENDIX II

PRETRIAL SERVICES

NOTICE TO DEFENDANTS

I, _____,
Print Name (First, Middle, Last)

am being asked questions about myself by a pretrial services officer. I will not be questioned about the charges, and I should avoid talking about them at this time. I understand that I am under no obligation to provide any information and do not have to answer any questions.

Any answers to these questions will be used by the court to decide whether I will be released or kept in jail pending any further proceedings. The information will be made available to the court, to my attorney, and to the prosecuting attorney.

Any information I provide should be truthful. Providing false information is a separate crime and could be used to deny my release before trial or increase my sentence if I am convicted.

If I am found guilty, either after trial or after pleading guilty, the information I provide here will be made available to a U.S. probation officer for the purpose of preparing a presentence report and may affect my sentence in this or another case. For instance, information about drug use, prior criminal conduct, money or property received from criminal conduct, or information given by me that is shown to be false may increase my sentence.

I know that I have the right to speak with a lawyer before answering any questions. If I cannot afford a lawyer, one will be appointed to represent me. Asking for a lawyer will not hurt my chance for pretrial release, but may delay the decision on whether or not I will be released until counsel is obtained.

I have read this form, or had it read to me, and I understand what it means.

I do _____ I do not _____ want a lawyer during this interview.

DATE: _____

DEFENDANT'S SIGNATURE

PRETRIAL SERVICES OFFICER

NOTES: _____